

1 understands by walk-in.

2 MR. HONIG: Okay.

3 JUDGE STEINBERG: As it was used in the document
4 that he assisted in as, as Exhibit 51, page 8, the phrase
5 "walk-in" is used on that page three times. Were those your
6 words?

7 WITNESS: I believe so, yes.

8 JUDGE STEINBERG: And what did you mean by that?

9 WITNESS: That's how they came to the station.

10 MR. HONIG: All right. And --

11 JUDGE STEINBERG: Okay.

12 MR. HONIG: -- the words "resume on file" as they
13 appear on page 28 of tab 7, what did that mean?

14 JUDGE STEINBERG: Wait a minute. Are those your
15 words?

16 WITNESS: Oh --

17 JUDGE STEINBERG: Twenty-eight, tab seven. Twenty-
18 eight, attachment seven. Pardon me. Attachment 7, page 28,
19 where it says under Tom Koon, Cari Perez, Bob Thompson, resume
20 on file. Did -- was that our phraseology or someone else's?

21 WITNESS: Well, it may have been Ms. Cranberg's
22 phraseology. It may have meant, meant application on file.

23 JUDGE STEINBERG: You don't know.

24 WITNESS: Not for certainty.

25 JUDGE STEINBERG: Then you ought to ask Ms. Cranberg

1 these questions --

2 MR. HONIG: I, I may but --

3 JUDGE STEINBERG: -- just get converted to that.

4 MR. HONIG: I may.

5 BY MR. HONIG:

6 Q But you, you reviewed and approved the February
7 26 -- 23, 1990 opposition to petition to deny which included
8 this exhibit, did you not?

9 A Yes.

10 Q Now when you reviewed it, and you saw resume on
11 file, what was your understanding what that term meant?

12 A That that person had appeared at the radio station
13 and applied for a job.

14 Q Now could resume on file also have meant that the
15 station had recruited and gotten resumes through its, through,
16 through seeking out candidates?

17 MS. SCHMELTZER: Objection.

18 MR. HONIG: I'm --

19 JUDGE STEINBERG: It's, it's speculative. It's
20 could have -- could it have meant --

21 MR. HONIG: Does the word -- do the word -- I'll,
22 I'll withdraw the --

23 JUDGE STEINBERG: He, he just explained what,
24 what --

25 MR. HONIG: Let me ask, let me ask it another way.

1 JUDGE STEINBERG: -- they meant to him.

2 MR. HONIG: Is your understanding of that term at
3 the time, "resume on file", does that term encompass both
4 resumes derived from walk-ins and resumes derived from
5 recruitment?

6 WITNESS: It could, yes.

7 MR. HONIG: Okay. Now if you would look at the
8 entry for Reverend Mark Spitz, famous name, on the same --
9 they're both on the same page. There you'll see the
10 February 15th draft said no women or minorities applied. Then
11 the draft that's filed with the Commission that says race of
12 others sending resumes cannot be determined. How did that
13 change occur?

14 WITNESS: It's a clarification that the race of the
15 others could not be determined as opposed to stating that no
16 women or minorities applied.

17 MR. HONIG: Okay. Your Honor, rather than go
18 through the whole thing, because I think other than that it
19 will speak for itself at the same time, at this time I would
20 like to again --

21 JUDGE STEINBERG: Are you going to ask Ms. Cranberg
22 questions on this?

23 MR. HONIG: Yes.

24 JUDGE STEINBERG: Hold, hold off your --

25 MR. HONIG: You want me to hold on to it until then?

1 JUDGE STEINBERG: What?
2 MR. HONIG: You want me to hold it until then or --
3 JUDGE STEINBERG: Yeah.
4 MR. HONIG: -- remove it now?
5 JUDGE STEINBERG: Hold it -- hold off until then.
6 MR. HONIG: Hold off on it? Okay.
7 JUDGE STEINBERG: Yeah. Let me ask a question while
8 you've got these two documents side by side. When, when you
9 reviewed the opposition before you signed your affidavit, did
10 you lay table 3 side by side with what we're calling Exhibit
11 51 to check to see whether or not anything was accurate or
12 anything was changed? Do you understand the question?
13 WITNESS: Yeah, I, I expect I understand your
14 question. Did I compare them at reading the final document?
15 JUDGE STEINBERG: Correct.
16 WITNESS: I don't recall.
17 JUDGE STEINBERG: In reading the final document
18 which we're calling attachment 7 the opposition, did you
19 notice that some of your language from what we've called, what
20 we're calling Exhibit 51 was different or changed? At the, at
21 the time you reviewed it.
22 WITNESS: Well, I think some of the information was
23 updated so --
24 JUDGE STEINBERG: So basically, and correct me if
25 I'm wrong, you forwarded Exhibit 51 to Arnold & Porter.

1 WITNESS: Right.

2 JUDGE STEINBERG: And then later on in response to
3 request for additional information or on your own, you
4 submitted additional information.

5 WITNESS: Correct.

6 JUDGE STEINBERG: And to the best of your knowledge
7 you, the additional information was incorporated in table 3.

8 WITNESS: Yes.

9 JUDGE STEINBERG: But no change was ever made to
10 Exhibit 51.

11 WITNESS: Right.

12 MR. HONIG: Now if you'd go back to Exhibit 50 for
13 one moment.

14 (Pause.)

15 WITNESS: Okay.

16 MR. HONIG: Was that in effect an early draft of
17 what became Exhibit 51?

18 WITNESS: First, I should say that we did a lot of
19 charts and who was hired when over different times throughout
20 this process. Table 50, table 50 begins in 1983 --

21 JUDGE STEINBERG: You mean Exhibit 50.

22 WITNESS: Exhibit 50. Exhibit 51 begins in --

23 MR. HONIG: 1983.

24 WITNESS: -- 1983 as well. It may be a, a preceding
25 document, a working document. I, I don't recall specifically.

1 MR. HONIG: Perhaps counsel will stipulate it
2 appears in the chronology somewhere around where January 1990
3 would have been not dated but, but it appears that that's what
4 it is.

5 MS. SCHMELTZER: I'm not going to stipulate. I have
6 no idea what the date of this document is.

7 (Pause.)

8 MR. HONIG: Well, when you developed Exhibit 50 were
9 you working off an earlier draft than this?

10 MS. SCHMELTZER: Objection. I don't think you've
11 established that he developed Exhibit 50.

12 MR. HONIG: Well, I think he testified that, that he
13 and Paula Zika wrote this.

14 JUDGE STEINBERG: Yeah. That's the way I remember
15 it.

16 MR. HONIG: And it runs through 1989. In fact the
17 last opening in the date in Exhibit 50 is 9/25/89.

18 (Pause.)

19 MS. SCHMELTZER: What's your question, counsel?

20 MR. HONIG: And, and the last -- I've been trying to
21 help refresh the witness's recollection. The last full-time
22 entry in Exhibit 51 is that same one, Reverend David Schultz,
23 9/25/89. Then there's a part-time entry, Marty Reed,
24 10/10/89. Now does that refresh your memory on the
25 relationship between Exhibit 50 and Exhibit 51?

1 (Pause.)

2 WITNESS: I can't say with 100 percent certainty
3 that the one was a working document of the other. It may have
4 been.

5 MR. HONIG: Are you pretty sure it was now?

6 MS. SCHMELTZER: He said -- he just answered the
7 question.

8 MR. HONIG: I, I know. I'm asking another question.

9 MS. SCHMELTZER: Well, I'm objecting.

10 JUDGE STEINBERG: Sustained. I think you milked it
11 for all it's worth. He doesn't know.

12 MR. HONIG: Well, I don't want to withdraw it. Let
13 me hold on to it and try it with the other witnesses I guess.
14 Just a second.

15 BY MR. HONIG:

16 Q Could you go back to Exhibit 49 please?

17 A Okay.

18 Q Okay. Now that is another -- did you write this?

19 A I believe so, yes.

20 Q And is this -- would it be accurate to say that this
21 is another document that you wrote that contains your, your
22 thoughts as to a possible response to the petition to deny?

23 A I would agree with that, yes.

24 MR. HONIG: Okay. And Your Honor, I'd like to
25 move --

1 JUDGE STEINBERG: It's already received. Forty-nine
2 is already in.
3 MR. HONIG: Oh, it's in.
4 JUDGE STEINBERG: Yeah.
5 MR. HONIG: Now look at page 3 of this Exhibit 49.
6 Look at the first sentence.
7 (Pause.)
8 WITNESS: Okay.
9 MR. HONIG: You'll see the words "foreign language".
10 WITNESS: Wait a minute. Which document?
11 MS. SCHMELTZER: What page are you on?
12 MR. HONIG: Page 3 of Exhibit 49.
13 MS. SCHMELTZER: Oh, he has the wrong exhibit.
14 WITNESS: I must have the wrong page. Okay, first
15 sentence.
16 MR. HONIG: Okay. You with me?
17 WITNESS: Yes.
18 MR. HONIG: What did, what did you mean by the term
19 "foreign language"?
20 WITNESS: Our announcers pronounce within the
21 format, the classical format any music compositions and
22 composers and phraseologies from foreign language as part of
23 the classical repertoire. We like our announcers to be able
24 to feel comfortable in doing that.
25 MR. HONIG: Now Your Honor, my notes may be a little

1 unclear here. Fifty-two was, has not been admitted yet. Is
2 that right?

3 JUDGE STEINBERG: That's correct.

4 MR. HONIG: Okay. Could you take a look at 52
5 please?

6 WITNESS: Okay.

7 MR. HONIG: Now did you write this?

8 MS. SCHMELTZER: What, what page are you referring
9 to, counsel?

10 MR. HONIG: All, all of it. Pages 1, 2 and 3.

11 MS. SCHMELTZER: Well, 1 is the cover sheet, the fax
12 transmittal sheet or cover letter.

13 MR. HONIG: Yes.

14 MS. SCHMELTZER: Are you asking him is that his
15 handwriting?

16 MR. HONIG: Yes.

17 WITNESS: Yes.

18 BY MR. HONIG:

19 Q And did you write pages 2 and 3 also?

20 A I believe so --

21 Q Now --

22 A -- yes.

23 Q Now is it accurate to say that this consisted of
24 your thoughts on an appropriate response to one of the FCC's
25 inquiry letters in this case?

1 (Pause.)

2 A I believe so, yes.

3 MR. HONIG: Okay. I would move Exhibit 52 into
4 evidence.

5 MS. SCHMELTZER: Your Honor, I would object. It's,
6 it's just a draft. It's just an evolving document. It was
7 not filed with the Commission, and I don't see any relevance.

8 MR. HONIG: Again, Your Honor, I think this has more
9 credibility perhaps than something that's filed with the
10 Commission, because it's the witness's own thoughts in his own
11 hand.

12 MS. LADEN: Your Honor, I, I object. Mr. Honig has
13 not shown through this witness or otherwise why these changes
14 in this draft I mean what was filed with the Commission prove
15 if any.

16 MR. HONIG: The point is to show the, the change
17 there. The, the words appearing in the final document and the
18 words appearing here I don't think are different in the sense
19 that there is a change in the, of the type that we were going
20 to before where, where one could argue that there were
21 material differences in the meaning. But rather this is his
22 words and his thoughts. And it, it certainly shows what
23 portion or at least a portion of the pleading that wasn't just
24 argument of counsel which came from the, from the thoughts of
25 the principal himself.

1 MS. SCHMELTZER: Your Honor, he hasn't established
2 that there's anything materially different between this
3 document and what's been filed with the Commission. It's not
4 coming in as impeachment. I don't understand why it would
5 have to come in at all.

6 MS. LADEN: All right. Your Honor --

7 JUDGE STEINBERG: Wait.

8 MS. SCHMELTZER: Because this record is burdened
9 enough with this kind of trivia.

10 JUDGE STEINBERG: One more and one response and then
11 a ruling.

12 MS. LADEN: I would also point out, Your Honor, that
13 I don't see where it matters what counsel inserted if
14 anything. And, and also it's not shown that this is the
15 last -- that the difference between this one and the one that
16 was filed is attributable to counsel. There may have been
17 other drafts in between.

18 JUDGE STEINBERG: I'm going to reject Exhibit 52 for
19 the reasons stated by counsel for the Church and counsel for
20 the Bureau.

21 (Whereupon, the document referred to
22 as NAACP Exhibit No. 52 was rejected
23 as evidence.)

24 MR. HONIG: Your Honor, if you could refresh my
25 memory. Were 53 through 56 admitted?

1 JUDGE STEINBERG: Okay, let me see, 52, 53 through
2 56, they're not received. They're still pending.

3 MR. HONIG: Each of those was another back and forth
4 document to counsel. And, and it may -- and I could do it
5 either through this witness or through counsel or through
6 both. And I think that it would probably more logical
7 actually to do it through counsel. So I'm not going to -- I'd
8 like to go past those if I could.

9 JUDGE STEINBERG: Sure. It's your cross.

10 MR. HONIG: Now could you look at 57 please?

11 WITNESS: Okay.

12 MR. HONIG: Now is this your writing?

13 MS. SCHMELTZER: What page are you referring to?

14 MR. HONIG: The whole thing.

15 MS. SCHMELTZER: Well, would you -- there -- you
16 want to ask him about page 1 first and then page 2?

17 JUDGE STEINBERG: Well, we got 1, 2, 3, 4, 6 pages.
18 They all appear to be in the same writing. So I think it's
19 sufficient. I think -- are we looking at the wrong exhibit?
20 He's looking at the wrong exhibit.

21 MR. HONIG: Fifty-seven.

22 MS. SCHMELTZER: Sorry.

23 JUDGE STEINBERG: That's okay. It's a good thing
24 I'm --

25 WITNESS: I'm sorry.

1 JUDGE STEINBERG: -- I'm still awake.

2 WITNESS: I'm, I'm sorry. Could you repeat the
3 question please?

4 MR. HONIG: This is --

5 JUDGE STEINBERG: Basically is all this your
6 handwriting.

7 WITNESS: Appears to be, yes.

8 MR. HONIG: Okay. And for what purpose was this
9 prepared?

10 WITNESS: Well, let me just before I look at it
11 thoroughly tell you once again that we prepared many -- we did
12 many searches for much information for many different
13 questions.

14 MR. HONIG: Now this speaks --

15 JUDGE STEINBERG: Wait. Are you still reviewing?

16 WITNESS: I haven't answered yet.

17 JUDGE STEINBERG: Yeah, he hasn't answered for what
18 purpose this was prepared. He just prefaced his remarks by
19 saying we did, we did lots of things for lots of different
20 inquiries.

21 MR. HONIG: Okay.

22 JUDGE STEINBERG: And now he's reviewing it.

23 (Pause.)

24 WITNESS: Mr. Honig, the only way I can answer this
25 question honestly is to say that this, this paperwork was --

1 there's not a date on it to your knowledge, is there?

2 MR. HONIG: No, there doesn't seem to be.

3 WITNESS: This paperwork was developed to answer
4 some question or some argument through this, through this
5 petition to deny procedure.

6 BY MR. HONIG:

7 Q Now let me help you with the purpose of this. This
8 is not an issue actually I'm going to go into that much. But
9 take a look at page 6 of this exhibit. And on the second line
10 where there's typed -- you see throughout there are references
11 to particular people that are hired and their names. And then
12 you, you list various names sort of as a net hire. Do you see
13 it says hired Bob Thompson, Tom Koon and a little bracket, net
14 gain of. And then below the last lines net gain of one
15 female.

16 A Right.

17 Q In your testimony at pages -- well, actually at
18 paragraphs 24 through, through 41, you speak about the process
19 that you and Paula Zika went through in responding to this
20 question about the, the net gain came up which is the subject
21 of the other issue in this case. Does that refresh your
22 memory as to what you were doing when you created this
23 document?

24 A Whether or not it was used to try to figure out that
25 net gain --

1 Q That's right.

2 A -- problem?

3 Q Yes.

4 A Yeah, I've reviewed this before. I've seen this
5 before. And Paula Zika and I talked about this too. I'm not
6 for sure why we did this. It may have been done for that
7 reason but probably not, because the net gain thing was only
8 for the last year of the license. And this, this talks about
9 gains and losses for, for the 6 or 7 years of the period so --

10 Q Let me help you. When you went through -- when,
11 when the FCC raised this allegation about the, the net gain --

12 A Yes.

13 Q -- in fact you went through -- their concern was
14 with 1989. But you in fact went through all the prior years
15 to, to make sure that, that everything at that point was, was
16 right, did you not?

17 A Was right for what reason?

18 Q What you -- that what you told the Commission in
19 every respect was right. You did a -- you and Paula Zika at
20 that, at some point after it had been called to your attention
21 by the Commission did a full tilt review. And I think that
22 there's almost -- there's words like that that are used in
23 your declaration. I can't find them immediately. This was
24 that review, wasn't it?

25 A Well, I'd like to review what my testimony says

1 about that.

2 Q Let me see if I can find it.

3 JUDGE STEINBERG: Can I ask Mr. Honig a question?

4 MR. HONIG: Yes.

5 JUDGE STEINBERG: Is there anything in No. 57 which
6 impeaches the, the testimony of Mr. Stortz in paragraphs 24
7 through the end of his testimony?

8 MR. HONIG: The, the answer is I'd have to study it.
9 To be honest with you I cannot --

10 JUDGE STEINBERG: Well, then why are we spending
11 time on this if you don't know.

12 MR. HONIG: I, I will tell, I will, I will tell you
13 why. Before we put in our exhibits, the Bureau was kind
14 enough to send me theirs. They are taking leave on that
15 issue. I realized that this document that appeared to me to
16 be something that would be needed by whoever took the lead on
17 that issue wasn't in the Bureau's exhibits, but I knew it
18 needed to be there. So I put it in.

19 JUDGE STEINBERG: Why? If it doesn't -- then if
20 they're taking the lead, then let them do it. I mean -- but
21 you, you can't say to me that there's -- right now when you're
22 asking these questions you cannot tell me that there's
23 anything in Exhibit 57 which impeaches the credibility of, of
24 Mr. Stortz's testimony in the section entitled "The Station's
25 Renewal Applications" which discusses the discrepancies.

1 MR. HONIG: I don't know whether it impeaches or
2 whether it confirms. I just think that it --

3 JUDGE STEINBERG: Well --

4 MR. HONIG: -- ought to be in the record.

5 JUDGE STEINBERG: -- if it confirms, then why don't
6 you let Mrs. Schmeltzer -- what do you care whether it
7 confirms?

8 MR. HONIG: I'm --

9 JUDGE STEINBERG: The Bureau cares. I care.

10 MR. HONIG: Well, I know, I'm --

11 JUDGE STEINBERG: Let's move on to something else.
12 And you can, you can talk --

13 MR. HONIG: One or the other of you, whoever it
14 helps, can make it your exhibit.

15 JUDGE STEINBERG: They might not want to.

16 MS. LADEN: Your Honor, there is something I need to
17 clarify. To my knowledge, I don't think we have divided up
18 the issues as to who's taking the lead on what.

19 MR. HONIG: That's true.

20 MS. LADEN: We, we represent the Chief of the Mass
21 Media Bureau, and we take the lead with respect to the
22 Bureau's case on all the issues. I just didn't want the
23 record to reflect that we had agreed who was going to --

24 MR. HONIG: No.

25 MS. LADEN: -- take the lead on what issues.

1 MR. HONIG: No, I may have mis-spoken.

2 MS. LADEN: I wanted to make that --

3 MR. HONIG: The point -- we're not developing a case
4 on that issue. We have no opinion as to that issue. The
5 Bureau has developed a case on that issue.

6 JUDGE STEINBERG: Okay. So let's move on to
7 something else. This document is -- we'll leave it the way it
8 is. The -- Ms. Laden now knows where it is. Write down
9 Exhibit 57 so you don't lose track of it. If you want to use
10 it, you may.

11 MS. LADEN: Thank you, Your Honor.

12 JUDGE STEINBERG: Okay, so --

13 MR. HONIG: Okay. Now this has been authenticated.
14 We can move on.

15 MS. SCHMELTZER: Well, I disagree with that
16 characterization.

17 JUDGE STEINBERG: Well, it, it was done in his
18 handwriting. So we know that Mr. Stortz is the person to ask
19 questions of. So to that extent it's been -- I mean it's,
20 it's not an imaginary document.

21 MR. HONIG: Okay.

22 BY MR. HONIG:

23 Q If you could turn to Exhibit 58.

24 A Okay.

25 Q Is this -- did you write this?

1 (Pause.)

2 A I believe I did, yes.

3 Q Okay. Now -- and these -- this was your impressions
4 in response to a comment that I filed regarding the, the
5 renewal application in 1992, is that not right?

6 A Well, it would -- it says it's Mr. David E. Honig's
7 comments or re Mr. Honig's comments. I don't believe this
8 document was ever filed.

9 Q That's right. It's --

10 A Yeah. Okay.

11 Q -- it's your thoughts, but it was not filed. Is
12 that right?

13 A Okay. I believe that's correct.

14 Q Okay. And there are some statements here that don't
15 appear in anything that was ultimately filed by counsel.
16 Isn't that right? For example, in your paragraph that's
17 numbered 3, how else could they possibly talk about the
18 station? That would suggest McDonnell-Douglas Aircraft would
19 be discriminating if it wanted its engineers to understand
20 flight and so forth. That was your words that wasn't in the,
21 in what the lawyers filed. Isn't that right?

22 A That was my thought, yes.

23 Q Okay. And in today's economic environment and with
24 a niche format it can hardly be called discriminatory to see
25 qualified employees, that was your thought, but it didn't wind

1 up in the filing, isn't that right?

2 A That is right.

3 MR. HONIG: Okay. Your Honor, I would offer Exhibit
4 58 in evidence.

5 MS. SCHMELTZER: Your Honor, I would object. I see
6 no relevance to the document. It wasn't filed with the
7 Commission, and it was purely a letter that the, that Mr.
8 Stortz sent to someone else. It doesn't constitute
9 impeachment of anything that's been filed with the FCC.

10 JUDGE STEINBERG: What, what happened to this, Mr.
11 Stortz, after you -- it's, it's not signed. There's no
12 signature mark. Why is there no signature mark?

13 WITNESS: Well, I'm not for sure what happened to
14 this. It may have been -- maybe our counsel was preparing a
15 response to Mr. Honig's latest comments.

16 JUDGE STEINBERG: Do you know if you, if this was
17 sent to counsel?

18 WITNESS: Well, it has a fax number on it. So I
19 would presume that it was sent to counsel, yeah.

20 JUDGE STEINBERG: Which -- what, the 314 --

21 WITNESS: 725-3801.

22 JUDGE STEINBERG: Is that --

23 WITNESS: That's, that's --

24 JUDGE STEINBERG: -- your -- is that the station
25 number?

1 WITNESS: -- that's the station's fax number, yeah.

2 JUDGE STEINBERG: There's also -- we also have --
3 there's also a 3030 number, right, that you have?

4 WITNESS: That's the business number.

5 JUDGE STEINBERG: Yeah.

6 WITNESS: Yeah.

7 JUDGE STEINBERG: That's the one in the ads.

8 WITNESS: That's -- yeah, that's the --

9 JUDGE STEINBERG: Okay.

10 WITNESS: -- business line.

11 JUDGE STEINBERG: So this was sent to you, but the
12 fax doesn't show who it was sent to.

13 MR. HONIG: It was sent from, Your Honor.

14 WITNESS: From I would suggest.

15 JUDGE STEINBERG: Oh --

16 MR. HONIG: Yeah, that's the --

17 JUDGE STEINBERG: Did I misstate that?

18 MR. HONIG: Yeah. That's the --

19 MR. GOTTFRIED: -- at the bottom the outgoing.

20 JUDGE STEINBERG: Okay. So this is, shows that it
21 was from you, but it doesn't show to whom it was sent. And
22 you don't remember.

23 WITNESS: You want me to --

24 JUDGE STEINBERG: Don't guess.

25 WITNESS: -- give it to the best of my recollection?

1 JUDGE STEINBERG: To the best of your recollection.
2 But if it's a pure guess, I don't want it. And that's your
3 judgment call.

4 WITNESS: Well, I think I should answer that. I, I
5 don't know who I would have sent it to other than our counsel.

6 MR. HONIG: Now Your Honor --

7 JUDGE STEINBERG: Okay, it was offered, right?

8 MR. HONIG: Yes. I'm, I'm offering it.

9 MS. SCHMELTZER: But there was no such letter --
10 filed in September of --

11 MS. LADEN: I'm, I'm just not clear what the
12 relevance of this is.

13 MR. HONIG: May, may I respond please? This one I
14 think I've, I've pointed out material differences between this
15 document and what ultimately was filed with the Commission.
16 The point is not to show a variance in the sense that there
17 was some misrepresentation. The point is to show that in a,
18 that there were statements made here which reflect this
19 witness's state of mind that, that aren't evident from what
20 was filed with the Commission. And since the witness has
21 testified extensively about his intentions and his, his
22 thoughts and what he, he believed the station's policy was,
23 it's proper rebuttal to those statements of intentions and
24 adds value to what was sanitized and then filed with the
25 Commission.

1 MS. SCHMELTZER: But Your Honor, Mr. Honig has not
2 shown any connection between this document and anything filed
3 with the Commission.

4 MR. HONIG: Doesn't need to.

5 JUDGE STEINBERG: Well, this, this also -- let me
6 just interrupt. This, this also reflects the state of mind of
7 Mr., Mr. Stortz at, at, during the time this petition to deny
8 process was going on. This couldn't cut no blades number one.
9 He vehemently rejects in this letter, the way I read it
10 vehemently rejects the suggestion that they, they
11 discriminated and that the station has discriminated against
12 blacks. It's -- at, at several points he states the, the
13 suggestion that blacks, the recruitment is limited to only
14 low-level positions is preposterous. Preposterous, that
15 reflects his state of mind. And it contains a rationale for
16 what the station did in his, in his own mind and what the
17 station did and why it did it.

18 And I think it is relevant to the state of mind of
19 this witness at this particular time and, and to the Church's
20 arguments to the Commission. And, and he says several times
21 over this can be hardly called discriminatory because it's got
22 a rational basis, and here's the rational basis. So I think
23 it is relevant. And I, you know, you can read these things
24 several ways. So I'm going to receive Exhibit 58 over
25 objection.

1 (Whereupon, the document referred to
2 as NAACP Exhibit No. 58 was received
3 into evidence.)

4 MR. HONIG: Now --

5 JUDGE STEINBERG: Let me just give you a 23-minute
6 warning.

7 MR. HONIG: I've only got one more exhibit. Then
8 I'm done. So I, I may not need that long.

9 JUDGE STEINBERG: Okay. Well, you can take 23
10 minutes on it.

11 MR. HONIG: Okay. I'd like to show you -- I'm
12 placing before the witness several that I'm not going to
13 introduce into evidence because it's too long, it's too
14 illegible and, and it would just burden the record --

15 JUDGE STEINBERG: Have we got it?

16 MR. HONIG: Huh?

17 JUDGE STEINBERG: Have we all gotten it, got it?

18 MR. HONIG: I can distribute it. It's so thick --

19 JUDGE STEINBERG: What is it?

20 MR. HONIG: It's, it's documents produced in
21 discovery numbered 004209 through 004347. I'm not going to
22 introduce this.

23 JUDGE STEINBERG: Okay, but what are they?

24 MR. HONIG: Let me explain what this is. These are,
25 are the records, the entire set of the FM station's sales

1 records an offer it happens 1989 showing which salespeople
2 were assigned to which accounts and what accounts the station
3 had in those years. And what I've done in Exhibit 60, and I
4 hope Your Honor will be happy that I've done a summary, is
5 I've taken these materials, have listed the particular
6 accounts which the stations, which the opposition to the --
7 not the opposition. Just actually Bureau Exhibit 14, one of
8 the station's pleadings identified as the classical oriented
9 accounts, which salespeople was handling those, referenced it
10 to pages in case anyone wants to check. Then I counted the
11 number of, of accounts listed which was 668 and the number of
12 accounts listed which had classical ties among those which was
13 15. And what I wanted to do before introducing that, before
14 offering No. 60, was just to, to have the witness authenticate
15 these records from which this summary was derived.

16 JUDGE STEINBERG: Well, I, I think that's something
17 that -- the, the records were turned over in, in discovery.
18 And do you have any question that they're authentic?

19 MR. HONIG: Well, I certainly don't.

20 JUDGE STEINBERG: And couldn't -- well, this seems
21 to be something that you, you could have done in the
22 deposition. And I -- it seems to me that you ought to
23 probably gather with opposing counsel and at least reach a
24 stipulation that the, the material that you've compiled in
25 Exhibit 60 is accurate --